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 California Strawberry Commission

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF ALAMEDA

CALIFORNIA STRAWBERRY
 COMMISSION,

Plaintiff,

v.

THE REGENTS OF THE UNIVERSITY
 OF CALIFORNIA and DOES 1 through 50,
 Defendants.

Case No. **RG 13698448**

COMPLAINT FOR:

- (1) BREACH OF CONTRACT
- (2) BREACH OF IMPLIED CONTRACT
- (3) DECLARATORY RELIEF

Plaintiff California Strawberry Commission (the "Commission") hereby alleges for its Complaint against The Regents of the University of California ("University") as follows:

PARTIES

1. The Commission is a state-chartered agency of the California Department of Food and Agriculture, headquartered in Watsonville, California. The Commission represents California's strawberry growers. Its mission is to promote California strawberries and manage industry issues, with a focus on production and nutrition research, trade relations, public policy, marketing and communications.

2. Defendant University is, and at all times relevant to this action was, a California Constitutional Corporation authorized and empowered to administer the public

1 trust known as the University of California, with full powers of organization and
 2 government thereof. The University administers, among other things, the University of
 3 California at Davis.

4 3. The Commission is unaware of the true names and capacities, whether
 5 individual, corporate, associate or otherwise of Does 1 through 50, inclusive, and therefore
 6 sues these defendants and real parties in interest by such fictitious names. The
 7 Commission will amend this pleading to show their true names and capacities when they
 8 have been ascertained, or upon proof at trial. The Commission is informed and believes
 9 that each of the Doe defendants is responsible for the liabilities, breaches, damages, and
 10 harms alleged in this action.

11 4. The Commission is informed and believes and on that basis alleges that at all
 12 relevant times the University and the Doe Defendants, and each of them, were the agents,
 13 servants, and employees of each of the other defendants, and were acting within the full
 14 course and scope of said agency and employment with the full knowledge and consent,
 15 either express or implied, of each of the other defendants and are responsible therefore.

16 NATURE OF THE ACTION

17 5. Over the past thirty years, the Commission has spent millions of dollars
 18 funding the University's research program for breeding new varieties of strawberries so
 19 that the Commission's growers can obtain the most advanced varieties that result from that
 20 program. The Commission is forced to bring this lawsuit because the University seeks to
 21 exclude the Commission from the results of the research that the Commission funded, and
 22 instead enter into a licensing agreement with a private entity that will not provide new
 23 strawberry varieties to the Commission's growers. The University thereby seeks to
 24 appropriate for itself and a private entity, to the exclusion of the Commission, the fruits
 25 (both literally and figuratively) of decades-long research that the Commission funded for
 26 its benefit.

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28 ///

OPERATIVE FACTS

6. The University operates a program for researching and breeding new varieties of strawberries ("Pomology Program") out of the University of California at Davis.

7. Since 1980, two researchers have directed the course of the Pomology Program -- Doug Shaw and Kirk Larson ("Shaw and Larson").

8. The objective of the Pomology Program has been the development of a strawberry germplasm and new varieties of strawberries. A germplasm is a living tissue built upon, improved on, and modified over many years from which new varieties of plants, such as strawberries, are grown. It can be in the form of seeds or another plant part such as a stem, leaf, pollen, or a few cells that can be cultured into a whole plant.

9. Since 1980, the Commission has funded the Pomology Program in exchange for access to the results of the program, which include the germplasm, the research data, and the varieties of strawberries grown from the germplasm.

10. Each year from 1980 through 2012, the University submitted a Project Plan/Research Grant Proposal ("Project Plan") requesting a specific amount of money from the Commission to fund the Pomology Program.

11. Each year from 1980 through 2012, the Commission and the University entered into a Research Agreement, which incorporated the Project Plan. Each Research Agreement:

- a. Provides that it is a contractual agreement between the Commission and University under the direction of Shaw and Larson;
- b. Provides that Shaw and Larson will perform services for the Commission in accordance with the Project Plan; that the immediate goal of the research is the release of new strawberry varieties; and that the longer-term goal is the development of improved germplasm from which new strawberry varieties can be grown;
- c. Sets forth the amount the Commission will pay to the University; and

1 d. Provides that all results achieved in connection with the project shall
2 be maintained for inspection by the Commission.

3 12. In accordance with the Research Agreements, from 1980 through 2012, the
4 University under the direction of Shaw and Larson developed the improved germplasm
5 and used the germplasm to grow improved strawberry varieties. The Commission's
6 strawberry growers obtained access to the new varieties of strawberries grown from the
7 germplasm by, among other things, acquiring clones of the new varieties from the
8 University.

9 13. In late 2012, Shaw and Larson stated their intent to resign from the
10 Pomology Program and take the results of the Pomology Program, including the
11 germplasm, to establish their own private company to research and breed strawberries.
12 The majority of the Commission's growers will not obtain the new strawberry varieties
13 that Shaw and Larson will develop from the germplasm because Shaw and Larson intend
14 to exclusively distribute the new strawberry varieties to select growers.

15 14. In spring of 2012, the University informed the Commission that it will not
16 replace Shaw and Larson upon their departure, and that it intends to terminate the
17 Pomology Program such that the University will no longer develop and sell new
18 strawberry varieties to the Commission's growers. Instead, the University will license the
19 results of the Pomology Program to Shaw and Larson and/or their private company.

20 15. Although the Commission funded the Pomology Program and the
21 development of the germplasm for over thirty years so that the Commission's growers can
22 obtain new strawberry varieties, the University and Shaw and Larson thus intend to
23 appropriate for themselves all the benefits resulting from the Pomology Program. The
24 University and Shaw and Larson, if permitted to carry out their plan, will themselves
25 continue to economically benefit from the results of the Pomology Program that the
26 Commission funded, while the Commission's growers will be left with nothing.

27 16. Additionally, the University's conduct jeopardizes the integrity of the
28 germplasm, including the living plants from which new varieties are grown, which need

1 constant maintenance and care. The University has failed to give the Commission
2 reasonable assurance that such maintenance and care will be provided when it terminates
3 its Pomology Program.

4 FIRST CAUSE OF ACTION

5 (Breach of Contract)

6 17. Plaintiff realleges and incorporates by reference paragraphs 1 through 16 as
7 though set forth in full.

8 18. From 1980 through 2012, the Commission and the University entered into a
9 series of Research Agreements.

10 19. Except for obligations which were excused, waived, discharged, or which the
11 University is estopped to assert, the Commission has performed all terms, conditions and
12 obligations on its part to be performed under the Research Agreements.

13 20. The University has materially breached the Research Agreements by, among
14 other things, repudiating its obligations to provide the Commission with the results of the
15 Pomology Program, including without limitation, access to the new strawberry varieties
16 and the germplasm. The University has further breached the Research Agreements by
17 failing to give reasonable assurances that it will continue to maintain the germplasm.

18 21. The University's wrongful conduct in repudiating its obligations under the
19 Research Agreements will cause great and irreparable injury to the Commission unless and
20 until enjoined by order of this Court. The Commission's growers cannot obtain new
21 strawberry varieties from the germplasm if the University is permitted to license the
22 germplasm to Shaw and Larson's private entity and terminate the Pomology Program
23 while simultaneously assuring to itself the continuing economic benefits of the
24 Commission's decades-long investment.

25 22. The Commission is informed and believes, and based thereon alleges, that
26 without issuance of the injunction by this Court, the University will continue the acts
27 herein complained of by licensing the germplasm to Shaw and Larson and/or their private
28 entity, terminating the Pomology Program, and not providing the necessary care and

1 maintenance of the germplasm.

2 23. The Commission has no adequate remedy at law for this imminent and
3 irreparable harm.

4 24. As a further direct and proximate result of the University's acts of breach
5 described herein, the Commission has suffered damages in excess of the jurisdictional
6 amount of this Court in an amount to be proved at trial, together with penalties and/or
7 interest as allowed by law.

8 SECOND CAUSE OF ACTION

9 (Breach of Implied Contract)

10 25. The Commission realleges and incorporates by reference paragraphs 1
11 through 24 as though set forth in full.

12 26. Alternatively, an implied-in-fact contract exists requiring the University (1)
13 to provide the Commission with the results of the Pomology Program, including without
14 limitation access to the germplasm and the new strawberry varieties grown from the
15 germplasm, and (2) to maintain the germplasm for the Commission's benefit.

16 27. This contract is implied from at least the following conduct: (1) the
17 University sought funding from the Commission every year from 1980 through 2012 for
18 the Pomology Program, the goal of which is to release new strawberry varieties to the
19 Commission's growers and develop improved germplasm from which new strawberry
20 varieties can be grown and supplied to the Commission's growers; (2) the Commission
21 provided the requested funding every year from 1980 through 2012; and (3) the University
22 provided the Commission's growers new strawberry varieties grown from the germplasm
23 each year from 1980 through 2012.

24 28. The University has materially breached the Research Agreements by
25 repudiating its obligations to provide the Commission with the results of the Pomology
26 Program, including without limitation, access to the germplasm and the new strawberry
27 varieties grown from the germplasm. The University has further breached the Research
28 Agreements by failing to give the Commission reasonable assurances that it will continue

1 to maintain the germplasm.

2 29. The University's wrongful conduct in repudiating its obligations under the
3 Research Agreements will cause great and irreparable injury to the Commission unless and
4 until enjoined by order of this Court. The Commission's growers cannot obtain new
5 strawberry varieties from the germplasm if the University is permitted to license the
6 germplasm to Shaw and Larson and/or their private entity and terminate the Pomology
7 Program while simultaneously assuring to itself the continuing economic benefits of the
8 Commission's decades-long investment.

9 30. The Commission is informed and believes, and based thereon alleges, that
10 without issuance of the injunction by this Court, the University will continue the acts
11 herein complained of by licensing the germplasm to Shaw and Larson and/or their private
12 entity, terminating the Pomology Program, and not providing the necessary care and
13 maintenance of the germplasm.

14 31. The Commission has no adequate remedy at law for this imminent and
15 irreparable harm.

16 32. As a further direct and proximate result of the University's acts of breach
17 described herein, the Commission has suffered damages in excess of the jurisdictional
18 amount of this Court in an amount to be proved at trial, together with penalties and/or
19 interest as allowed by law.

20 THIRD CAUSE OF ACTION

21 (Declaratory Relief)

22 33. Plaintiff realleges and incorporates by reference paragraphs 1 through 32 as
23 though set forth in full.

24 34. An actual controversy has arisen and now exists between the Commission,
25 on the one hand, and the University, on the other hand, regarding their respective rights,
26 remedies, liabilities, and obligations under the contracts between these parties.

27 35. The Commission contends that under the contracts between the parties, the
28 University is required (1) to provide the Commission access to the results of the Pomology

1 Program, which include the germplasm, the research data, and the varieties of strawberries
 2 grown from the germplasm, and (2) maintain the germplasm in good condition and
 3 preserve its integrity.

4 36. The Commission is informed and believes and on that basis alleges that the
 5 University disputes each of these contentions.

6 37. The Commission thus seeks a judicial determination of the respective rights,
 7 remedies, and obligations of the parties with respect to the contracts between the
 8 Commission and the University. Such a declaration is appropriate at this time to allow the
 9 parties to ascertain their respective rights, duties, and obligations under the contracts.

10 PRAYER FOR RELIEF

11 WHEREFORE, the Commission prays for judgment against the University as
 12 follows:


13 1. For a preliminary and permanent injunction: (1) enjoining the University
 14 from licensing the germplasm to Shaw and Larson and/or any entity under their direction
 15 or control; (2) enjoining the University from denying the Commission access to the results
 16 of the Pomology Program, including the germplasm, the research data, and the varieties of
 17 strawberries grown from the germplasm, and (3) directing the University to maintain and
 18 preserve the germplasm.

19 2. For damages according to proof; and

20 3. For such other and further relief as the Court deems just and proper.

21 Dated: October 8, 2013

RUTAN & TUCKER, LLP

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 23 By: 
 24 Michael Adams
 25 Attorneys for Plaintiff
 26 California Strawberry Commission
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